

1 Q Okay. So that's what you're talking about when
2 you're saying sometimes a customer might not have needed
3 service outside of Huntington and Charleston?

4 A Yes, sir.

5 Q Is that correct? But you have a commonwealth
6 terminal, don't you?

7 A Yes, sir.

8 Q And doesn't a commonwealth terminal have a zoning
9 command in it?

10 A Not that I'm aware of, sir.

11 Q Okay. Did you ever talk to Mr. Raymond about the
12 zoning command in the commonwealth terminal?

13 A I don't think I know what you mean by zoning
14 command. I've never heard that terminology.

15 Q Okay. Is it possible that there's a command in the
16 transmitter that would allow you to -- if you're an RCC
17 customer to receive a smaller service area coverage?

18 MR. HARDMAN: Your Honor, I have no objection to
19 this witness being examined, but he has explained several
20 times he's not technical and that sounds pretty technical to
21 me.

22 MR. JOYCE: I think he's doing pretty well so far,
23 Mr. Hardman, without your guidance.

24 BY MR. JOYCE:

25 Q Do you understand my questions, Mr. Harrison?

1 A Except for the zoning terminology. I've never heard
2 that so, no, I'm not familiar with that.

3 Q Okay. Assume that I don't -- I know enough about
4 the terminology to be dangerous, so you can use whatever
5 terminology you're familiar with. You have how many
6 transmitters for your RCC system?

7 A I believe 14.

8 Q Okay. You offer different types of service to your
9 RCC customers, I presume?

10 A As far as different styles of pagers?

11 Q Yes.

12 A Yes, sir.

13 Q Are you aware of the fact and, again, from your
14 knowledge because I know Mr. Hardman has explained to you that
15 you're not a technician, but are you aware of the fact that on
16 a paging system you can have some transmitters on the air and
17 others not? You can sort of alter the service coverage for
18 your customers?

19 A No, sir.

20 Q All right. So you're simply not aware of whether
21 you can do that?

22 A Yes, sir. That's correct.

23 Q Do you think Mr. Raymond might be familiar with that
24 possibility?

25 A I have no way of answering that, sir. I have no

1 idea. I don't know what Mr. Raymond knows and doesn't.

2 Q Fair enough. Well, who was it who gave you the idea
3 that the PCP system would make sense because that would allow
4 you to provide service in a smaller area as opposed to a
5 larger one?

6 A I don't know if anybody gave me that idea, sir.
7 It's just they only had one transmitter so it could only work
8 X miles, so I knew that it wasn't going to be the wide area
9 coverage.

10 Q But you didn't have anything to compare it to, Mr.
11 Harrison? You didn't know whether or not you could reduce the
12 size of your RCC service area? Is that correct?

13 A Right.

14 Q So presumably you discussed with your superiors
15 relative to the advantages and disadvantages of RCC versus
16 PCP? Correct?

17 A Yes, sir.

18 Q All right. Because you didn't have authority to
19 make those decisions, did you?

20 A No, sir.

21 Q All right. And you talked with Mr. Raymond about
22 what type of service options you offered to your customers?
23 Correct?

24 A Yes, sir.

25 Q You talked about whether you were going to offer

1 tone and voice, for instance? Correct?

2 A Yes, sir.

3 Q And on your RCC system I presume you were probably
4 instructed not to put tone and voice on it because it takes up
5 a lot of air time? Isn't that correct?

6 A No, sir.

7 Q You didn't have those discussions with Mr. Raymond?

8 A I don't think so, sir.

9 Q So you weren't being selective about what kind of
10 traffic you put on your RCC paging system? Whatever the
11 customer wanted you'd offer it to them?

12 A Basically, but I prefer the digital. Most customers
13 are happier with one that just shows a phone number over a
14 voice, so that's the one I pushed the most.

15 Q Those paging units that you were putting out on your
16 PCP system, is it fair to say that they were subject to poor
17 quality, that you wouldn't have wanted to put them on your RCC
18 paging system?

19 A The pagers came from the RCC system, sir.

20 Q Okay. But they were old pagers, weren't they?

21 A I don't have a date on when they were made or when I
22 got them or anything, no, sir.

23 Q I didn't ask for a date. They were old pagers,
24 weren't they, Mr. Harrison?

25 A They were used, yes.

1 Q Is it fair to say that they were of inferior
2 quality, Mr. Harrison?

3 A No.

4 Q They were not as good as the same pagers that you
5 were putting on the same dates on the RCC paging system?

6 A It was the same exact pager, just a different
7 frequency, sir.

8 Q Now, you had to make a strategic decision that your
9 RCC paging system would offer wide area service and you would
10 build a PCP system that would offer smaller area service?
11 Somebody make that decision at Capitol? Correct?

12 A Yes, sir.

13 Q Did you make that decision?

14 A No, sir.

15 Q Did you have any discussions with the person who
16 made that decision?

17 A I'm not sure, sir.

18 Q That's an unusual answer, Mr. Harrison. I'm just
19 asking you to tell me whether or not you discussed with
20 anybody at Capitol the idea of leaving the RCC service as wide
21 area and then building a PCP system that would be a small area
22 service. Do you recall having --

23 MR. HARDMAN: Your Honor --

24 BY MR. JOYCE:

25 Q -- having those discussions?

1 A No, sir.

2 Q And you certainly don't recall Mike Raymond saying
3 to you the reason I'm instructing you today to offer PCP
4 service is because I want you to offer a smaller area coverage
5 on this particular frequency? You don't recall him ever
6 telling you that?

7 A No, sir.

8 Q So we've covered the coverage area as one reason why
9 you were offering PCP service.

10 A Yes, sir.

11 Q The other one you mentioned was price? Correct?

12 A Yes.

13 Q Now, you mentioned your RCC service was \$30 a month.
14 Is that correct?

15 A Yes, sir, for one pager.

16 Q But isn't it true that you could reduce those, those
17 rates for -- if you wanted to go win a customer away for a
18 large account, something like that? It wasn't unusual at all
19 for you to offer a lower rate, was it?

20 A We offered a discount price for quantity, but Mr.
21 Raymond's in charge of the prices. I can't change it on my
22 own, no, sir.

23 Q So it has nothing to do with some tariff or
24 something? This is a decision that Mr. --

25 MR. HARDMAN: I object, Your Honor. The witness

1 just --

2 MR. JOYCE: I'll, I'll withdraw the question, Ken.

3 BY MR. JOYCE:

4 Q Pricing decisions were dictated from Mr. Raymond to
5 you? Is that correct?

6 A Yes, sir.

7 Q All right. So, although you've mentioned that \$30 a
8 month was your standard rate, I presume it was not your only
9 rate for RCC service?

10 A No, sir.

11 Q Sometimes it could be substantially lower if it was
12 a large enough account? Correct?

13 A Ten percent was the basic. When a person got three
14 or more pagers we could drop it ten percent.

15 Q Okay. So now you've brought it down with 10
16 percent. That brings it down to \$27 each?

17 A Yes, sir.

18 Q Okay. And that's just automatic?

19 A Yes, sir.

20 Q If I could get three or more pagers it's \$27 a
21 month?

22 A Yes, sir.

23 Q What if it's ten or more pagers a month?

24 A I'd usually call Mr. Raymond and ask him what the
25 best price I could give them would be.

1 Q And if it's a big enough account, presumably he
2 wants the business, he gives you the okay to lower the price?
3 Is that how that worked?

4 A It has happened before, yes.

5 Q Okay. And this was done just through a telephone
6 call between you and Mr. Raymond? Is that correct?

7 A Sometimes it would be a couple days, but sometimes
8 I'd get an immediate answer. It just varied.

9 Q So it's fair to say that if I only had one paging
10 unit I don't have that discount. Somebody else has a discount
11 but they're getting the same kind of service that I'm getting?
12 Isn't that correct?

13 A Yes, sir.

14 Q The only difference is you're charging them less
15 because they purchased more units? Correct?

16 A Yes, sir.

17 Q Did Mr. Raymond ever tell you that he was concerned
18 that you were discriminating between one customer and another
19 if your prices were different?

20 A Not that I recall, sir.

21 Q Just so I know what the range of rates were here,
22 what was the -- was or is the lowest rate that you could
23 possibly get on your RCC paging system?

24 A If a person owns it, it's right at tariff. If they
25 rent it -- or you referring to just voice pagers or any type

1 of pager?

2 Q Any type at all.

3 A Probably \$15.

4 Q It could have been as low as \$15?

5 A Yes, sir, for a non-voice pager.

6 Q And isn't it true that sometimes for -- just to get
7 a, a customer on board, you might even give away service for
8 awhile?

9 A No, sir.

10 Q It's not true that Capitol ever had promotionals
11 where they gave away free service?

12 A Not that I'm aware of, sir. Not that I'm aware of,
13 sir.

14 Q Would you take a look at the large stack of
15 documents that you have there? And behind Tab No. 2 do you
16 see what's referred to as -- this is Capitol Exhibit 2 which
17 Mr. Hardman prepared for us and it's called Petitions to Deny
18 or Request to Amend Application?

19 A Yes, sir.

20 Q Do you see that? And it looks like it's a legal
21 document that was filed before the Federal Communications
22 Commission. It is a legal document that was filed before the
23 Federal Communications Commission. Do you see that?

24 A Yes, sir.

25 Q All right. And do you see this was filed by RAM

1 Technologies through its attorneys?

2 A Yes, sir.

3 Q All right. If you would flip to page 33.

4 Q Do you see that?

5 A Yes, sir.

6 Q All right. It appears to be a Yellow Pages
7 directory page? Is that correct?

8 A Yes, sir.

9 Q Do you see at the top in the large black -- letters
10 what appears to be the Yellow Pages directory ad for RAM Page?

11 A Yes, sir.

12 Q Then below that isn't that Capitol Paging's ad?

13 A Yes, sir.

14 Q All right. And you see -- if you take a look at the
15 Capitol Paging ad, take your time, over on the left column --

16 A Yes, sir.

17 Q -- where it says, "Saves you money. Keeps you in
18 touch. Gives you freedom?"

19 A Yes.

20 Q Then it says, "Try one today. The low cost will
21 surprise you?"

22 A Yes.

23 Q It also says, "Free trial at no obligation." Do you
24 see that?
25

1 A Yes.

2 Q All right. So I take it from your testimony that,
3 although Capitol advertised free service in the Yellow Pages
4 directory, you are simply unfamiliar with the fact that you
5 did so?

6 A No. I guess I was misunderstood. A free trial was
7 just to see -- sometimes people that had a RAM Page, American
8 or other competitor would not be happy, want to compare ours
9 to theirs. We would let them try it for a maximum seven days
10 free or if it was somebody that never had a pager, before they
11 committed and spent money they could try it for a few days, up
12 to a week, to see if it would work for them. But as far as
13 actually giving somebody a free pager to utilize indefinitely,
14 no, sir.

15 Q Okay. So your previous answer was not true and
16 you're just qualifying it now? I mean --

17 A Yeah. I misunderstood the question.

18 Q Because my question was simply whether or not free
19 service was ever offered. The answer obviously is yes.
20 Correct?

21 A Yes, sir.

22 Q Now, when Mr. Hardman asked you about pricing, you
23 said it -- I believe you said it was your idea to lower the
24 price for PCP service, but when I talked to you about it I
25 thought you said that Mr. Raymond made pricing decisions?

1 A He does 99 percent of the time. Now, I might have
2 even contacted him on that. All I know is I just had a lot of
3 unhappy customers and was just trying to do something to keep
4 them. That's my main job is to keep the customers happy.

5 Q Did Mr. Raymond ever say to you at some point as far
6 as the PCP service is concerned you could give it away for
7 free and I don't really care?

8 A No, sir. No, sir.

9 Q But he obviously gave you more leeway with PCP
10 pricing decisions that he did with the RCC? Correct?

11 A Yes, sir.

12 Q Well, now getting back to the, to the Greenup County
13 volunteers, Mr. Harrison, and this is an area that confused me
14 earlier. You've got a perfectly good RCC paging system, works
15 over wide area system?

16 A Yes, sir.

17 Q You've already told me that you had -- you could
18 offer discounts? Correct?

19 A Yes, sir.

20 Q You could give them away for free on a trial basis
21 at least? Correct?

22 A For up to a week, yes, sir.

23 Q And I mean they're a public service so I can't
24 imagine that anybody's going to fault Capitol if they're
25 discounting their service for commercial customers. I can't

1 | imagine that somebody's going to complain about discounting it
2 | for an ambulance service, right?

3 | A Yes, sir.

4 | Q Why didn't you just provide the RCC service?

5 | A I even offered them the RCC service at tariff price
6 | and they couldn't afford it.

7 | Q I'm not sure you're answering my question, though,
8 | Mr. Harrison.

9 | A Okay. Sorry.

10 | Q I thought we had already established that you
11 | weren't required to provide everybody paging service at 30
12 | bucks a month? Correct?

13 | A Yes, sir.

14 | Q Is -- just for point of reference, is \$30 a month
15 | the tariff rate?

16 | A No, sir.

17 | Q What is the tariff rate?

18 | A \$15.

19 | Q So you're providing service -- now I'm starting to
20 | get confused. You're providing service higher than the tariff
21 | rate, too?

22 | A That's air time -- the tariff is on the air time and
23 | the equipment rental we can charge, I assume, whatever we want
24 | to for it --

25 | Q I follow.

1 A -- above the \$15.

2 Q I follow. So you're saying the air time is 15 bucks
3 and there's nothing you can do about it, but you can play
4 around with the, with the unit --

5 A Yes, sir.

6 Q -- price? Okay. And to the best of your knowledge
7 West Virginia had nothing to do with the unit? They only
8 regulated the air time?

9 A Yes, sir.

10 Q Who told you that?

11 A Probably a fellow by the name of Mike Richards who
12 was the Operations Manager when I first started.

13 Q Now, when the Greenup County folks came to you, did
14 you talk to Mr. Raymond about your quandary about providing
15 service to them?

16 A Yes, sir.

17 MR. HARDMAN: Your Honor, this subject was explored
18 at great length before. All I did on redirect --

19 JUDGE CHACHKIN: Yeah. That's what I'm wondering.

20 MR. JOYCE: I'm talking about prices and I'm just
21 trying -- I'm almost done.

22 JUDGE CHACHKIN: Well, wait a minute. This is going
23 way beyond price. I mean, you asked all kinds of questions
24 about price and now we're getting into the Greenup. I don't
25 know where we're going now. This seems to be way beyond the,

1 the cross -- the redirect.

2 MR. JOYCE: The purpose of my, my question, Mr.
3 Harrison, is related to the rates you could charge to the
4 Greenup County folks.

5 JUDGE CHACHKIN: And he told you there's a tariff
6 price he could charge.

7 BY MR. JOYCE:

8 Q And you've also told me, Mr. Harrison, that you gave
9 the service away for free for awhile, right?

10 A A period up to a week if a person wanted a trial,
11 yes, sir.

12 Q All right. So presumably there's some flexibility
13 in those tariff rates, aren't there?

14 MR. HARDMAN: I object, Your Honor. That assumes
15 facts not in evidence, legal --

16 JUDGE CHACHKIN: Sustained.

17 BY MR. JOYCE:

18 Q Mr. Harrison, nobody ever told you it was against
19 the tariff -- or against the law to give away free trial
20 service, did they?

21 A No, sir.

22 Q So isn't there at least the possibility that you
23 could have discounted your price to the Greenup County folks
24 so that they could afford to receive the RCC service?

25 MR. HARDMAN: I object, Your Honor.

1 JUDGE CHACHKIN: Sustained. There's no basis for
2 it. Giving someone a trial to let them see -- work it out is
3 far different than giving permanent service. I don't see any
4 connection between the two. You've got the tariffs and you --
5 if he's wrong about the tariffs, use them. Otherwise, let's
6 move to something else.

7 BY MR. JOYCE:

8 Q Mr. Harrison, Mr. Hardman on redirect asked you a
9 couple of questions about your involvement in testing and the
10 -- your equipment's ability to do testing. I just want to be
11 sure we're clear about a couple of things. The programming of
12 a chain command itself is not a test, is it?

13 A No, sir, the programming, no.

14 Q All right. You could have done that in Huntington
15 even if you didn't have the testing capabilities in
16 Huntington? Correct? Let me withdraw the question because I
17 -- the moment I said it I knew I was going to confuse you.
18 Earlier in your testimony you said that for a certain period
19 of time, and we're not too sure how long, you did not have the
20 ability to do testing in, in --

21 A Or programming. Or programming period.

22 Q Oh, okay. Well, that's --

23 A You've got to be able to program to be able to do
24 the tests and I didn't even have a terminal to program a pager
25 in Huntington for a long time.

1 Q I see. Then the only thing that I'm confused about
2 is what that period of time was. Now, your PCP system was
3 installed in approximately March of 1991? Is that correct?

4 A I have no idea, sir.

5 Q I presume when this system was going through this
6 testing period that you're talking about with the Greenup
7 County folks, that ten month period, do you remember that?

8 A Yes, sir.

9 Q Okay. Are you saying that at no time did you have
10 testing capabilities?

11 A As far as I know. I really don't recall, though, as
12 far as dates or times.

13 Q And you had no programming capability?

14 A As far as I recall, no, sir.

15 Q Well, now I'm thoroughly confused, Mr. Harrison,
16 because now I don't know how you put a customer on your system
17 in Huntington if you can't even program him in.

18 A Call Charleston and have them program a Huntington
19 number or an Ashland or a Parkersburg, whatever number I
20 needed for the customer.

21 Q Okay. That helps. So during that period if chain
22 commands were entered into pagers, for instance, it would have
23 occurred in Charleston?

24 A As far as I recall, yes, sir.

25 Q And, again, the head of the Charleston office you've

1 already told me is Mr. Raymond? Correct?

2 A Yes, sir.

3 Q All right.

4 MR. JOYCE: I have no further questions.

5 JUDGE CHACHKIN: Does the Bureau have anything
6 further?

7 MS. LADEN: Yes, Your Honor.

8 JUDGE CHACHKIN: Let's just make sure it deals with
9 the redirect, not that we go over all the testimony again.

10 RE CROSS-EXAMINATION

11 BY MS. LADEN:

12 Q You testified that -- I think in answer to a
13 redirect from Mr. Hardman. You indicated that you had started
14 billing the Greenup County Rescue Squad in September of 1991?

15 A I believe so.

16 Q Is that correct?

17 A Yes.

18 Q And you indicated that sometime around the first of
19 the year, the early part of the year, they turned in their
20 pagers --

21 A I'm not sure exactly what date, but it was either
22 before -- it was within six months after I would say the
23 September 1st date. They brought them back.

24 Q Thank you. If you could turn to Capitol Exhibit 22
25 which is tabbed at No. 24 in that bigger one and this is a --

1 this is your testimony and I was wondering if you could read
2 paragraphs 6 and 7 to yourself.

3 A Yes, ma'am.

4 Q Does that refresh your recollection as to when -- a
5 period of time when there was no programming terminal in
6 Huntington?

7 A I'm not sure if I'm on the right page. From what I
8 just read there's no dates or times or anything in it.

9 Q Okay. Does it not indicate in what you've just read
10 that during the time when the engineers were in, in town your
11 secretary had to call Charleston to turn off the paging
12 function?

13 A Right.

14 Q So during the time when the engineers were in town
15 you did not have the capability of turning on or off the
16 testing function in Huntington?

17 A No, ma'am.

18 Q Is that correct?

19 A Yes, ma'am.

20 Q Thank you.

21 MS. LADEN: I have no further questions.

22 JUDGE CHACHKIN: Redirect?

23 MR. HARDMAN: Just one, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. HARDMAN:

1 Q In response to questions from Mr. Joyce my notes
2 reflect that you testified that, that \$15 was the lowest price
3 you could offer the common carrier paging service. Do you
4 recall that testimony?

5 A Yes, sir.

6 Q All right. Would you explain what you mean by that
7 \$15 price? What does that include?

8 A That is just -- that's what's normally charged the
9 person if they already own their equipment.

10 Q And does -- is that -- so if they already own --

11 A That's just the air time as far as I know.

12 Q Okay. Just the air time. Now, in the case of the
13 -- let's say someone who leased a pager, as well, you said the
14 total price was how much?

15 A Around \$30.

16 Q And of that how much was air time?

17 A \$15.

18 Q So when you discounted the, the -- the volume
19 discount is, is what, the way you referred to it?

20 A Yes, sir.

21 Q Is that right? Did any of that have to do with the
22 air time charge?

23 A No, sir.

24 Q Did you ever discount the air time charge?

25 A No, sir.

1 MR. HARDMAN: That's all I have, Your Honor.

2 JUDGE CHACHKIN: You're excused. Thank you.

3 (Whereupon, the witness was excused.)

4 JUDGE CHACHKIN: All right. Go off the record while
5 you get your next witness. Your next witness?

6 (Off the record.)

7 JUDGE CHACHKIN: Yes. Go ahead.

8 MR. HARDMAN: I do have one housekeeping matter,
9 Your Honor, which I can do now or after this witness. I don't
10 care.

11 JUDGE CHACHKIN: It's up to you.

12 MR. HARDMAN: All right. At this time I'd like to
13 move the admission of CAP Exhibit -- I believe it's 18, the
14 NABER documents.

15 JUDGE CHACHKIN: What is that?

16 MR. HARDMAN: Exhibit CAP 18 --

17 JUDGE CHACHKIN: Yes.

18 MR. HARDMAN: -- which is behind Tab 18 at -- this
19 -- we offered Mr. Vasek as a sponsoring witness for these
20 documents and he was not noticed for cross-examination, so I
21 would move their admission at this time.

22 JUDGE CHACHKIN: Any objection?

23 MS. LADEN: Yes, Your Honor, several grounds. The
24 main one is I'm not sure what the relevance is of this
25 document, Your Honor. Perhaps if Mr. Hardman could explain

1 the relevance.

2 MR. HARDMAN: I'd be happy to, Your Honor. The --
3 these are documents, as explained in the exhibit, from the
4 NABER files relating to the coordination of Capitol's PCP
5 application before the Federal Communications Commission and,
6 just by way of background, NABER is the recognized
7 coordinating body for private carrier paging applications and
8 the way the process works is that before you can file an
9 application at the Commission offices you have to submit your
10 application to NABER who will then -- with a request for
11 frequency and other information similar to an application.
12 Then NABER will determine from its data base how many other
13 licensees there are in the area and conditions surrounding its
14 use. And if it then believes that the request is proper, it
15 will then coordinate the application and forward the
16 application to the Commission for processing. Now, what
17 happens is that in the period of time between when the
18 application arrives at NABER and it is then coordinated and
19 filed with the FCC, NABER will be in constant communication as
20 part of its regular job, its function, with co-channel
21 licensees in the area and other interested parties to
22 determine if they have objections to this new applicant being
23 licensed on the frequency. And this -- these are documents
24 from the Commission's file during that process that --
25 communication -- for the most part, communications either from

1 NABER to RAM or vice versa or to other interested parties
2 concerning the coordination of, of Capitol's application.
3 Now, what they show is that RAM was going -- mounting a full
4 course press to keep Capitol off the frequency long before
5 they came up with this latest theory about the harmful
6 interference, and this is necessary to show the complete
7 chronology of RAM's actions to keep Capitol off of 152.48
8 megahertz.

9 MS. LADEN: Your Honor, did Mr. Hardman indicate
10 these were in the Commission's files?

11 MR. HARDMAN: NABER's files.

12 MS. LADEN: I still don't see how they're relevant.
13 I also have another objection and that is the affidavit of Mr.
14 Vasek is just a covering affidavit for the letters and the
15 letters are all hearsay.

16 MR. HARDMAN: I beg your pardon, Your Honor.

17 MR. JOYCE: My objection is more specific. This is
18 a selective -- I mean, some of these documents individually
19 might be admissible, but Mr. Hardman's inferences about what
20 these documents show is certainly improper. These -- there's
21 no indication here that this is -- that this represents all
22 the documents that NABER has and it's a selective selection of
23 documents that Mr. Hardman put together and he simply got
24 Donald Vasek to verify that he's seen these documents before.

25 MR. HARDMAN: I beg your pardon. The -- what the

1 | declaration says is that he's the custodian of these
2 | documents. He has authenticated them. Communications by
3 | NABER are not hearsay. Communications from a party to NABER
4 | are not hearsay and --

5 | MR. JOYCE: How is that possible?

6 | MS. LADEN: I disagree with that. I still --

7 | MR. HARDMAN: Federal Rules of Evidence.

8 | Communications of a party are not hearsay. It's under the
9 | Federal Rules of Evidence.

10 | MR. JOYCE: Who is --

11 | MR. HARDMAN: NABER. He is a NABER official and
12 | this is --

13 | MR. JOYCE: Is he a party? That's item number 1.

14 | MR. HARDMAN: Mr. Vasek is the person at NABER
15 | responsible for these documents.

16 | MR. JOYCE: NABER is not a party, Mr. Hardman.

17 | MR. HARDMAN: No, but he -- his testimony was
18 | offered and there was an opportunity to notice him for cross-
19 | examination if you had any doubts about the authenticity of
20 | the document. He's --

21 | MR. JOYCE: Well, that's improper.

22 | MR. HARDMAN: He has, he has authenticated these
23 | documents --

24 | MR. JOYCE: Oh, no.

25 | MR. HARDMAN: -- and there was every opportunity if

1 | you had a question about that to require him to be produced so
2 | that he could do it in person.

3 | MR. JOYCE: That's totally improper.

4 | JUDGE CHACHKIN: What's improper?

5 | MR. JOYCE: This declaration is simply an
6 | authentication declaration. I have no objection to it on the
7 | basis of authenticating that these documents were in NABER's
8 | files, but to say that that suddenly converts these documents
9 | into anything other than hearsay is not correct.

10 | JUDGE CHACHKIN: It's not being offered for the
11 | truth. I assume it's being offered just for the fact these
12 | were the documents that were filed.

13 | MR. JOYCE: But then he --

14 | MR. HARDMAN: There are two, there are two purposes,
15 | Your Honor.

16 | JUDGE CHACHKIN: All right.

17 | MR. HARDMAN: First is to -- obviously to show state
18 | of mind at this point and there is testimony that, that
19 | Capitol was aware that this controversy was going on, so it is
20 | relevant for that purpose. But, in addition, to the, the --
21 | all of the documents involved are either official
22 | communications by NABER and certainly not hearsay because they
23 | made them. They are communications by RAM to NABER. That's
24 | not hearsay. Or they are communications in the ordinary
25 | course of business, in which case they would be under the